

Advisory Opinion

IECDB AO 2010-07

Subject: Application of Independent Expenditure Law to AFA Action, Inc./Iowa for Freedom

William Gustoff
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400 East Court Ave, Ste. 346
Des Moines, Iowa 50309

Dear Mr. Gustoff:

This opinion is in response to your letter of August 30, 2010, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that your client Murphy, Turner Associates represents AFA Action, Inc. (AFA) that is a non-profit 501(c)(4) entity. You are seeking guidance to ensure compliance with Iowa's campaign laws as amended by 2010 Iowa Acts, Senate File 2354.

QUESTIONS:

You provide a series of proposed courses of action for our consideration. We will address them below.

OPINION:

In response to the Citizens United v. Federal Election Commission decision that permitted, in part, corporations to engage in express advocacy independent expenditures, Iowa's General Assembly enacted 2010 Iowa Acts, Senate File 2354. That legislation amended Iowa Code section 68A.404 regulating independent expenditures and Iowa Code section 68A.503 regulating corporate contributions.

We will restate your courses of action in **bold type** with the responses to each in regular type immediately following. For ease of response, please consider any references to Iowa Code sections 68A.404 and 68A.503 as meaning Iowa Code sections 68A.404 and

68A.503 as amended by 2010 Iowa Acts Senate File 2354, sections 3 and 5, effective April 8, 2010.

1. AFA intends to make independent expenditures that expressly advocate a “no” vote on judicial retention for specific Iowa Supreme Court Justices.

Iowa Code sections 68A.404 and 68A.503 permit AFA to make independent expenditures that expressly advocate for or against a judicial retention election so long as AFA complies with the applicable campaign laws.¹

2. AFA’s campaign in Iowa will be known as “Iowa for Freedom” and Iowa for Freedom will have a separate account for the purpose of making independent expenditures in Iowa.

For purposes of filing Form Ind-Exp-O, AFA will be the “Organization” funding the expenditure and Iowa for Freedom will be the “Committee Name” as the independent expenditure committee.²

3. It is anticipated that all source funds for the Iowa for Freedom will come from AFA directly and that no other individuals or organizations will contribute specifically or directly for the campaign.

On Form Ind-Exp-O, AFA will be automatically deemed to be a donor as it is the “Organization” and no further disclosure of AFA is required. In addition, see our response under #7 below.

4. AFA Action may make solicitations for contributions. However, the donations will be made to AFA rather than to Iowa for Freedom.

See our response under #7 below.

5. If any donor wishes to contribute funds earmarked specifically for Iowa for Freedom, the donation will not be accepted. If it has already been sent to AFA it will be returned to the donor.

See our response under #7 below.

6. Printed and other materials naming Iowa for Freedom will have an attribution disclosure that states it is: “Paid for by AFA Action Inc. 2800 University Avenue #111, West Des Moines, Iowa 50266-1258.”

As Iowa for Freedom is the “independent expenditure committee” making the expenditure from its own account, the attribution should reflect that the published material was done by Iowa for Freedom. Under Iowa Code section 68A.405 if the published material is paid for by a corporation, the attribution shall include the “name and title of the corporation’s chief executive officer” and if the published material is a “result of an independent expenditure” it shall include a “statement that the published

material was not authorized by any candidate, candidate's committee, or ballot issue committee.”³

7. Any general solicitations by AFA will contain a disclaimer that substantially reads as follows:

“Iowa for Freedom is a project of AFA Action, Inc. Contributions or gifts to the AFA Action, Inc., a 501(c)(4) organization, are not tax deductible. Donations may be used for political purposes such as supporting or opposing candidates. No funds will be earmarked or reserved for any political purpose.”

In response to #3, #4, #5, and #7 we note that Iowa Code section 68A.404(3)“a”(2) requires the disclosure of only those donors who gave money for the purpose of furthering the independent expenditure. The statute also exempts from disclosure any dues paying members of an organization. The steps you have proposed demonstrate the position of AFA and Iowa for Freedom that no outside contribution or donation will be accepted if the funds are for the purpose of independent expenditure activities in Iowa. Rather, all funding will come from the general operating funds of AFA Action, Inc. You have also made it clear that if someone chooses to make a donation to AFA, that donation may be used for any variety of purposes – not just political purposes in Iowa. We commend you for taking these procedural safeguards to help eliminate questions concerning the funding stream for the independent expenditures.

8. All contributions directly to this account and independent expenditures from this account will be timely filed on the form provided from the Iowa Ethics and Campaign Disclosure Board. If, as is anticipated, AFA is the only source of funds for the Iowa for Freedom account, then AFA will be listed as the only donor.

As we have previously stated in this opinion, Form Ind-Exp-O is your public disclosure report and is required to be filed electronically via the Board's Web site. AFA will be the “Organization” and Iowa for Freedom will be the “Committee Name” as the “independent expenditure committee.” If your proposed courses of action are followed, no other donor disclosure information is required under the statute.

In addition to the statutes we have referenced in this opinion, we direct your attention to the Board's rules in 351—Chapter 4 that provide guidance on independent expenditures. In particular, rule 351—4.27 concerning the filing of an independent expenditure statement. You should also review IECDB Advisory Opinions 2010-01, 2010-03, and 2010-05

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Gerald Sullivan
John Walsh

Patricia Harper
Saima Zafar
Carole Tillotson

Submitted by: W. Charles Smithson, Board Legal Counsel

¹See IECDB Advisory Opinion 2004-03 in which the Board opined that a judicial retention election is a “candidate election” and not a “ballot issue election.”

² Form Ind-Exp-O is the prescribed Board form for purposes of an organization creating an independent expenditure committee and disclosing its independent expenditure activities. Iowa Code section 68A.404(3) requires the form to be filed in an “electronic format as prescribed by rule” meaning the form is required to be filed electronically via the Board’s Web site.

³ See Iowa Code section 68A.405(1) “f” and “h” as amended by 2010 Iowa Acts, Senate File 2354.